

U.S. Department of Labor Occupational Safety and Health Administration
San Francisco Federal Building
90 – 7th Street, Suite 18100
San Francisco, CA 94103



VIA USPS - Certified Mail

August 16, 2017

Ahern Rentals Inc.
1401 Mineral Ave
Las Vegas, NV 89106

Re: Ahern Rentals Inc. / Balint / 9-0050-17-059

To Whom It May Concern:

We hereby serve you notice that a complaint has been filed with this office by Mr. Balint (Complainant) alleging retaliatory employment practices in violation of the whistleblower provisions of the Surface Transportation Assistance Act (STAA), 49 U.S.C. §31105. A copy of the complaint is enclosed.

The Occupational Safety and Health Administration (OSHA) is responsible for enforcing the whistleblower provisions of STAA and will conduct its investigation following the procedures outlined in 29 CFR Part 1978. You may obtain a copy of the pertinent statute and regulations at www.whistleblowers.gov. Upon request, a printed copy of these materials will be mailed to you.

Under these procedures, OSHA will disclose to the parties information relevant to the resolution of the case as well as provide all parties an opportunity to fully respond. As such, both you and Complainant will receive a copy of each other's submissions to OSHA that are responsive to the above-referenced whistleblower complaint.

Per Presidential Memorandum – Managing Government Records, any future documents you submit to OSHA shall be submitted electronically, if possible, using the investigator's email address of the assigned investigator and that whatever you submit to OSHA, you also send a copy to Complainant at the address below:

Stephen Balint
P.O. Box 2389
Pahrump, NV 89041

If the information provided contains personal, identifiable information about individuals other than the complainant, such information, where appropriate, should be redacted before disclosure. OSHA may contact the party directly for the unredacted copy, if necessary.

Within 20 days of receiving this notice, please submit a written account of the facts and a statement of your position with respect to the allegation that you have retaliated against

Complainant in violation of STAA. Please note that a full and complete initial response, supported by appropriate documentation, may help to achieve early resolution of this matter.

In your written account, please include the following information:

- A brief timeline of relevant events leading to the alleged adverse employment action(s);
- The name(s) and job title(s) of the individual(s) who made the decision to take the alleged adverse employment action(s);
- A copy of all documents related to the adverse employment action(s), including, but not limited to, termination letters, letters, of warning, counselling memos, etc.;
- A list of employees who have experienced similar adverse employment actions within the last 2 years. Please include the employee's name, job title, date of hire, date of adverse employment action, type of adverse employment action, and reason(s) for adverse employment action;
- Evidence that other similarly situated employees actually experienced similar adverse employment actions. Such evidence can include, but is not limited to, termination letters, internal administrative documents which reflect the lay-off and/or termination, letters of warning, counselling memos, etc.;
- A copy of the company's discipline policy, including any progressive disciplinary policy. Please also document how the company's disciplinary policy was followed in this case. If the policy was not followed, please indicate why it was not followed;
- Please list relevant management witness names and contact information and indicate what relevant information you believe each witness will be able to provide;
- All HR and/or other investigative reports concerning or relating to Complainant's employment;
- The company's DOT Number;
- The company's DUNS Number;
- The company's TIN/EIN;
- The company's NAICS Code;
- The parent company's name, address, and contact information, if applicable.

Within 20 days of your receipt of this complaint you may submit to this agency a written statement and any affidavits or documents explaining or defending your position. Within the

same 20 days you may request a meeting to present your position. The meeting will be held before the issuance of any findings and a preliminary order. At the meeting, you may be accompanied by counsel and by any persons relating to the complaint, who may make statements concerning the case.

If investigation provides this agency with reasonable cause to believe that the Act has been violated and reinstatement of the complainant is warranted, you will again be contacted prior to the issuance of findings and a preliminary order, at which time you will be advised of the substance of the relevant evidence supporting the complainant's allegations, and you will be given the opportunity to submit a written response, to meet with the investigator and to present statements from rebuttal witnesses. Your rebuttal evidence must be presented within ten business days of this agency's notification described in this paragraph.

Attention is called to your right and the right of any party to be represented by counsel or other representative in this matter. In the event you choose to have a representative appear on your behalf, please have your representative complete the Designation of Representative form enclosed and forward it promptly. All communications and submissions should be made to the investigator assigned below. Your cooperation with this office is invited so that all facts of the case may be considered.

OSHA offers a voluntary program under which the Complainant and Respondent may resolve a whistleblower complaint outside of the investigative process, through early resolution. Early resolution is a process in which the parties attempt to negotiate a settlement with the assistance of a neutral OSHA whistleblower expert, who is not the investigator assigned to the case and is not involved in OSHA's decision-making on the merits of the case. Communications during the early resolution process are kept confidential, to the extent permitted by law, and are not disclosed to the Whistleblower Investigator or any other Department of Labor employee who is involved in the agency's decision-making on the merits of the case. If OSHA approves the parties' request for early resolution, the investigation will be stayed pending the outcome of the early resolution process. If the complaint is not resolved during the early resolution process, either party may share information and documents that it disclosed during the early resolution process with the assigned Whistleblower Investigator. If you are interested in this program, please sign, date, and return the attached "ADR Request Form."

Parties are encouraged to attempt early resolution of the complaint on their own or, upon request, with OSHA's facilitation. Voluntary adjustment of complaints can be effected by way of a settlement agreement at any time during the investigation.

All communications and submissions should be made to Mark Marchione, Regional Supervisory Investigator at Marchione.Mark@dol.gov.

If you choose to submit documents to OSHA that you allege are confidential and should not be disclosed to others without your consent, please identify with sufficient specificity each confidential or proprietary privilege for which protection from disclosure under the Freedom of Information Act (FOIA) is requested. Blanket claims of protection will not be accepted. Rather, please identify the specific information and/or document(s) for which protection is requested.

Absent receipt of specific information identifying and clarifying the asserted privileges, OSHA reserves the right not to accept your request.

Sincerely,

A handwritten signature in black ink that reads "Megan Eldridge". The script is cursive and fluid.

Megan Eldridge
Regional Investigator

FOR MARK MARCHIONE
Regional Supervisory Investigator
Whistleblower Protection Program

Enclosures: (1) Designation of Representative
(2) Copy of Complaint
(3) ADR Fact Sheet & ADR Form

Alternative Dispute Resolution (ADR) Frequently Asked Questions

What is OSHA Region IX's ADR program?

OSHA offers a voluntary Alternative Dispute Resolution (ADR) program in which the parties may attempt to resolve the dispute without an investigation. If the parties elect to pursue ADR, an OSHA official may help the parties achieve early resolution of the complaint before the onset of a full-scale investigation. Early resolution is a process in which the parties attempt to negotiate a settlement with the assistance of a neutral OSHA whistleblower expert, who is not the investigator assigned to the case and is not involved in OSHA's decision-making on the merits of the case. Communications during the early resolution process are kept confidential, to the extent permitted by law, and are not disclosed to the Whistleblower Investigator or any other Department of Labor employee who is involved in the agency's decision-making on the merits of the case. If OSHA approves the parties' request for early resolution, the investigation will be stayed pending the outcome of the early resolution process. If the parties decline to pursue ADR or if they pursue ADR, but fail to reach a settlement agreement, the investigator identified in the opening letter will proceed with an investigation. However, even if attempts at ADR fall through, the parties, with the assistance of the investigator, may enter into a settlement agreement at any time during the course of the investigation.

What are the benefits of ADR?

ADR allows the parties to resolve the complaint in a mutually satisfactory manner and is faster than an investigation. The process may also allow the parties to preserve or repair the employment relationship. If you do not reach a settlement agreement through an ADR session, OSHA will investigate the complaint like any other.

How do I sign up for OSHA's ADR Program?

If you would like to pursue ADR, please return the attached "Request for ADR" form within ten (10) business days of your receipt of this letter. If both parties request ADR, an OSHA official will be contacting you to facilitate an ADR session.

What happens if I want to pursue ADR but the other party does not agree?

OSHA Region X's ADR program is voluntary. Both Complainant and Respondent must agree to participate. If either party does not wish to participate, the OSHA investigator will proceed with an investigation.

What happens if both parties request ADR?

If both parties request ADR, an OSHA official will contact each party separately to coordinate a mutually-agreed upon date, time, location and format for the ADR session. If the parties agree upon a framework, an OSHA official will then facilitate the ADR session. (This facilitator will be someone other than the investigator identified in the opening letter.)

If the parties reach a settlement during the ADR session, the OSHA official will draft or review a proposed settlement agreement following the procedures outlined in the Whistleblower Investigations Manual (the Manual, available at www.whistleblowers.gov, Chapter 6, Remedies and Settlement Agreements.)

Does attempting ADR delay the OSHA investigation?

Respondent must provide its position statement within 20 days of receiving OSHA's opening letter unless the parties reach a signed settlement agreement prior to that date. Attempting early resolution does not confer an extension of time in which Respondent may submit its position statement unless OSHA feels that such an extension would benefit the ADR process.

How much does this process cost?

There is no charge to participate.

How can I learn more about OSHA's ADR program?

Please contact the investigator of record identified in your opening letter.

U.S. Department of Labor

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REQUEST FOR ADR FORM

Case No.: Ahern Rentals Inc. / Balint / 9-0050-17-059

The Occupational Safety and Health Administration (OSHA) offers a voluntary program under which the Complainant and Respondent may resolve a whistleblower complaint outside of the investigative process, through early resolution. Early resolution is a process in which the parties attempt to negotiate a settlement with the assistance of a neutral OSHA whistleblower expert, who is not the investigator assigned to the case and is not involved in OSHA's decision-making on the merits of the case. Communications during the early resolution process are kept confidential, to the extent permitted by law, and are not disclosed to the Whistleblower Investigator or any other Department of Labor employee who is involved in the agency's decision-making on the merits of the case. If OSHA approves the parties' request for early resolution, the investigation will be stayed pending the outcome of the early resolution process.

If the complaint is not resolved during the early resolution process, either party may share information and documents that it disclosed during the early resolution process with the assigned Whistleblower Investigator.

If you are interested in participating in early resolution, please fax this form or call the Whistleblower Investigator at (415) 625-2547 or Fax: (415) 625-2534.

_____ I am interested in pursuing ADR as an alternative to OSHA's investigation.

Signature

Date

Print Full Name

Daytime Phone Number

Email address

U.S. Department of Labor

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U.S. Department of Labor Occupational Safety & Health Administration DESIGNATION of REPRESENTATIVE FORM PLEASE COMPLETE THE INFORMATION IN THE BOXES BELOW. USE BLUE OR BLACK INK. RETURN THIS FORM TO OSHA AS SOON AS POSSIBLE.		
Case No.: 9-0050-17-059		
Investigator: Mark Marchione		
Respondent Name: Ahern Rentals Inc.		
Complainant Name: Stephen Balint		
The undersigned hereby enters his/her appearance as representative of Respondent in the above captioned matter:		
Respondent / Employer Name (Type or print in the box below)	Representative's Name (Type or print in the box below)	
Signature (Sign below)	Street Address or P.O. Box (Type or print in the box below)	
Date (Type or print in the box below)	City, State, ZIP (Type or print in the box below)	
Telephone (Type or print in the box below)	FAX (Type or print in the box below)	E-mail Address (Type or print in the box below)